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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,460	12/29/2005	Etienne Pouteau	3712036.00697	6141
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 04/27/2011			
EXAMINER				
LAU, JONATHAN S				
ART UNIT		PAPER NUMBER		
1623				
NOTIFICATION DATE		DELIVERY MODE		
04/27/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### **ADVISORY ACTION**

Continuation of 3. The proposed amendments AFTER FINAL, filed 30 Mar 2011, will not be entered because they raise new issues that would require further consideration and/or search and since the amendment presents additional claims without canceling any finally rejected claims it is not considered as placing the application in better condition for appeal.

Continuation of 11. Applicant's Remarks, filed 30 Mar 2011, have been fully considered and found not to be persuasive.

Applicant remarks that the specification provides guidance to the skilled artisan in making a determination of what sort of ingredient to add to act as protein, carbohydrate and lipid sources. Applicant notes the specification lists examples of protein sources, but the examples provided are not a limiting definition and the limitations are not found in the current claims. As recited above, the proposed amendments AFTER FINAL will not be entered.

Applicant remarks that a skilled artisan would recognize the traditional usage of the word "source" in the context of the claims would be something that provides all, or at least, key components of proteins, lipids and carbohydrates. However, no limitations of a key component is established in the art. Applicant remarks that a protein must include amino acids, a lipid fatty acids or steroids, and a carbohydrate mono and/or polysaccharides, however this does not establish the relationship of a carbohydrate "source" or the asserted key component to a carbohydrate itself. Therefore the explicit

inclusion of the term "source", such as "carbohydrate source", is deemed to broaden the term beyond "carbohydrates" and render it unclear what compound are encompassed.

Applicant notes that a carbohydrate does not directly provide, for example, lipids, however the limitation of "directly providing" is not found in the ordinary meaning of "source" within the context of the instant invention.

Applicant references of common usage in the terms in the art known by the skilled artisan, such as Exhibit A to Devlin. F, this exhibit provides knowledge of exemplary sources of dietary carbohydrates, such as potatoes providing amylopectin or amylose. However, this reference provides non-limiting examples such as provided within the instant specification. Knowledge of what is a source of, for example, amylopectin, does not define what materials are used as carbohydrate sources.

As discussed above, the rejection is maintained.

With regard to Genovese in view of Florent, Applicant remarks that Genovese notes that the purified lactose did not exert any significant influence on fasting blood glucose and fasting serum insulin concentrations did not show any significant decrease. However, Genovese reduction of blood glucose response in response to an oral glucose load (page 296, left column, paragraph 4-5 and right column, paragraph 3). Applicant provides Exhibit B to Legro to relate fasting blood glucose to insulin sensitivity, however Legro also teaches the relationship is specific to obese women with polycystic ovary syndrome (page 2696, right column, paragraph 2), teaching the fasting G:I ratio would not be predicted to be a good measure of insulin resistance in nonobese

PCOS women because they have neither fasting hyperinsulemia nor increased basal hepatic glucose production. Therefore the teaching in Genovese that the lactulose did not exert any significant influence on fasting blood glucose does not necessarily lead to the conclusion of no influence on insulin resistance, in view of the reduction of blood glucose response in response to an oral glucose load.

With regard to the absence of teaching of the method taught by Genovese in view of Florent to treat insulin resistance specifically by reducing insulin resistance, MPEP 2145 II. provides that mere recognition of latent properties in the prior art does not render nonobvious an otherwise known invention, and that recitation of an additional advantage associated with doing what the prior art suggests does not lend patentability to an otherwise unpatentable invention. Genovese in view of Florent teaches administering said compound to a patient in need of treating insulin resistance by reducing insulin resistance. Therefore absent evidence showing unexpected results, Genovese in view of Florent appears to teach administering the same compound in the same manner to the same patient population without recognition of latent properties or additional advantages associated with doing what the prior art suggests.

Therefore the rejection is maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Lau whose telephone number is (571)270-

3531. The examiner can normally be reached on Monday - Thursday, 9 am - 4 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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